



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Dr. W. A. Davis
State Registrar
Texas State Board of Health
Austin, Texas

Dear Sir:

Opinion No. 0-4854

Re: Under the facts submitted does the State Registrar have the authority to remove from the records the erroneous certificate of birth as ordered by the Dallas County Court?

You have submitted for our opinion the above question, which arises in connection with the birth record of Miss Jean Finley, whose original birth certificate was filed May 26, 1927, and signed by Mrs. Lillian B. English, who was the midwife at the birth. You enclose a photostatic copy of the original birth certificate, a certified copy of an order of Honorable George W. Harwood, County Judge of Dallas County, for the correction of the birth certificate, and a photostatic copy of a delayed certificate of the birth of the said Jean Finley. The order of Judge Harwood states:

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court, that the Officers of the Texas Department of Health, Bureau of Vital Statistics, Austin, Texas, and the Officers of the Bureau of Vital Statistics of the City of Dallas, Dallas County, Texas, the Local Registrar thereof, are hereby authorized and directed to remove from the records the erroneous birth certificate showing the date of the birth of the said minor, JEAN FINLEY, to be May 21st, 1927, and to enter a correct record of said birth showing same to be the correct date thereof, to wit, May 21st, 1926."

The only substantial difference between the facts shown by the original birth certificate and those shown by the delayed certificate is that, whereas the former shows the

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date of birth to have been May 21, 1927, the latter shows it as May 21, 1926. The delayed certificate is sworn to by the midwife, Mrs. Lillian B. English, and another witness, and was evidently prepared in contemplation of Judge Harwood's order.

Rule 51a of Article 4477, V. R. C. S. 1925, cited by you, provides in part:

" . . . that no certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this Act shall be altered or changed in any respect otherwise than by the amendments properly dated, signed, and witnessed. The State Registrar shall further arrange, bind, and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the name of decedents, and in the case of births, by the names of fathers and mothers. . . ."

The sentence last quoted evidences the intention of the Legislature that birth and death certificates filed by the State Registrar should not be thereafter removed or destroyed, but should be "permanently preserved". But the preceding sentence provides an exclusive method of amending the original record to make it speak the truth.

"'Amendment' means the act of freeing from faults, the act of making better or changing for the better, correction; improvement; reformation." Couch v. Southern Methodist University (Dallas Court of Civil Appeals), 290 S. W. 256, 260. "The term 'amendment' implies such an addition or change within the lines of the original instrument as will effect an improvement or better carry out the purposes for which it was framed." Livermore v. Waite (Cal.) 36 P. 424, 426; Ex parte Woo Jan, 228 F. 927, 941. The delayed certificate of birth submitted for filing, taken together with the order of Judge Harwood, constitutes a valid amendment within the meaning of Rule 51a of Article 4477, supra.

It is therefore our opinion that the original birth record of Jean Finley should not be removed or destroyed, but that it should be corrected to show the true date of birth,

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May 21, 1926; and that the delayed certificate of birth, together with the certified copy of Judge Harwood's order, should be filed as an amendment to the original instrument.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

W. R. Allen

W. R. Allen
Assistant

WRA:mp

RECEIVED 15, 1942

Gerald C. Mann

ATTORNEY GENERAL OF TEXAS

